

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

LOUIS TYRONE GREEN

§
§
§
§
§

CRIMINAL NO. 6:00-CR-5(2)

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On April 30, 2009, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Louis Tyrone Green. The government was represented by Bill Baldwin, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

Defendant originally pleaded guilty to the offense Conspiracy With Intent to Distribute Cocaine Base, a Class A felony. The offense carried a statutory maximum imprisonment term of life. The United States Sentencing Guideline range, based on a total offense level of 29 and a criminal history category of VI, was 151 to 188 months. On August 14, 2000, U.S. District Judge T. John Ward sentenced Defendant to 120 months imprisonment and five years supervised release subject to the standard conditions of release, plus special conditions to include drug aftercare. On December 21, 2007, Defendant completed the term of imprisonment and began service of the supervision term. On July 18, 2008, Judge Ward modified his conditions of release to include 180 days home detention due to violations of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from: committing another federal, state or local crime, and purchasing, possessing or using any controlled substance, except as prescribed by a physician. In addition, Defendant was required to participate

in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until released from the program by the probation officer. In its petition, the government alleges that Defendant violated his conditions of supervised release by submitting urine samples which tested positive for cocaine on June 18, 2008, March 11, 2009, and March 12, 2009, by submitting urine samples which tested positive for marijuana on June 5, 2008, June 18, 2008, June 26, 2008, and April 9, 2008, by possessing cocaine, and by possessing marijuana.

If the Court finds by a preponderance of the evidence that Defendant committed these violations, a statutory sentence of no more than five years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). The Court can find that illicit drug use constitutes possession. Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision by possessing cocaine in violation of Texas Health and Safety Code § 481.115 would constitute a Grade B violation, for which the Court shall revoke Defendant's term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B3.1(a)(1). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade B violation is 21 to 27 months. U.S.S.G. § 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated a condition of supervision by possessing marijuana in violation of Texas Health and Safety Code § 481.119, this violation would constitute a Grade C violation, for which the Court may revoke Defendant's term of supervised release in favor of a term of imprisonment, extend the supervision, or modify conditions of supervision. U.S.S.G. § 7B3.1(a)(2). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade C violation is 8 to 14 months. U.S.S.G. § 7B1.4(a).

U.S.S.G. § 7B1.1(b) indicates where there is more than one violation of the conditions of

supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to violating conditions of supervision by submitting urine samples which tested positive for cocaine on June 18, 2008, March 11, 2009, and March 12, 2009, by submitting urine samples which tested positive for marijuana on June 5, 2008, June 18, 2008, June 26, 2008, and April 9, 2008, by possessing cocaine, and by possessing marijuana. In exchange, the government agreed to recommend that Defendant serve 21 months.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Defendant, Louis Tyrone Green, be committed to the custody of the Bureau of Prisons for a term of imprisonment of 21 months with no supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be in Texarkana, Texas.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge T. John Ward for adoption immediately upon issuance.

So ORDERED and SIGNED this 1st day of May, 2009.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE